

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

OMAR MENDOZA VILLEGAS,	::	MOTION TO VACATE
Movant,	::	28 U.S.C. § 2255
	::	
v.	::	CRIMINAL NO.
	::	1:08-CR-0314-WBH-RGV-3
UNITED STATES OF AMERICA,	::	
Respondent.	::	CIVIL ACTION NO.
	::	1:15-CV-0778-WBH-RGV

FINAL REPORT AND RECOMMENDATION

Movant Omar Mendoza Villegas submitted a “Letter of Inquiry,” [Doc. 177], which the Court construed as Villegas’ first motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. On March 31, 2015, the Court ordered Villegas to submit an amended § 2255 motion within thirty days. [Doc. 178]. The Court advised Villegas that failure to respond to the order would be interpreted as a withdrawal of the motion. [*Id.* at 2]. More than thirty days have passed since entry of the Order, and Villegas has not submitted an amended § 2255 motion.¹ The Court interprets this as a withdrawal of his initial motion.

¹ Although Villegas has since filed a motion to reduce his sentence, [Doc. 179], that motion is not responsive to the Court’s March 31, 2015, Order and is not brought pursuant to § 2255.

Moreover, Federal Rule of Civil Procedure 41(b) allows a district court to sua sponte dismiss a habeas corpus action without prejudice if the petitioner fails to prosecute the action or to comply with any court order. Allen v. Albright, No. 09-00351-CG-B, 2009 WL 3062006, at *1 (S.D. Ala. Sept. 18, 2009). “In addition to its power under Rule 41(b), a court also has the inherent ability to dismiss a claim in light of its authority to enforce its orders and provide for the efficient disposition of litigation.” Zocar v. Castro, 465 F.3d 479, 483 (11th Cir. 2006) (citing Link v. Wabash R.R., 370 U.S. 626, 630-31 (1962)).

The Court’s Local Rules also provide that “[t]he court may, with or without notice to the parties, dismiss a civil case for want of prosecution if . . . [a] plaintiff . . . shall, after notice, . . . fail or refuse to obey a lawful order of the court in the case.” LR 41.3A(2), NDGa. Because Villegas has not complied with the Court’s order to submit an amended § 2255 motion, his case should be dismissed. See Martinez v. United States, Nos. 1:08-CR-0363-TWT-RGV-5 and 1:12-CV-1202-TWT-RGV, 2012 WL 3989952, at *2 (Aug. 6, 2012) (recommending dismissal without prejudice of § 2255 motion for movant’s failure to comply with lawful orders of the court), report and recommendation adopted by, 2012 WL 3989944, at *1 (N.D. Ga. Sept. 10, 2012). For the foregoing reasons, it is **RECOMMENDED** that this action be **DISMISSED**

WITHOUT PREJUDICE for Villegas' failure to prosecute and failure to obey the Court's order of March 31, 2015.

IT IS FURTHER RECOMMENDED, pursuant to Rule 11 of the of the Rules Governing Section 2255 Proceedings for the United States District Courts, that the Court decline to grant Villegas a certificate of appealability.

The Clerk is **DIRECTED** to terminate the referral of the § 2255 motion to the Magistrate Judge.

SO RECOMMENDED, this 14th day of May, 2015.


RUSSELL G. VINEYARD

UNITED STATES MAGISTRATE JUDGE